IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

CRL.A.No. 2201 of 2005

CC.318/2005 (C.C.673/2003) ON THE FILE OF THE JUDICIAL I CLASS MAGISTRATE-III, NEYYATTINKARA/ADDL.MUNSIFF-II, NEYYATTINKARA.

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APPELLANT: COMPLAINANT.

SUKUMARAN NAIR, S/O.GOVINDA PILLAI,
PRASANTH BHAVAN, CHUNAKANIMOODU, AMBOORI DESOM,
AMBOORI VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA

RESPONDENTS: ACCUSED AND STATE.

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1. SHAREEF, S/O.ABDUL KHARIM, RAJ BAHVAN,
KOVILLOOR DESOM, AMBOORI VILLAGE,
KUDAPPANAMOODU P.O. THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl.A No. 2201 of 2005

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Dated this the 20th day of December, 2006

JUDGMENT

Appellant was the complainant in C.C. No.318/2005 on the file of the Court of the Judicial Magistrate of the First Class-III, Nayyattinkara/Addl. Munisff-II, Neyyattinkara. 212/2003. . The allegation against the 1st respondent is that he issued two cheques for Rs.30,000/- and Rs.15,000/- to the appellant in discharge of his debt and when the cheques were presented for encashment, they were dishonoured stating that "full cover not received". Cognizance was taken as C.C.No.673/2003 and summons was issued to the 1st respondent. Subsequently, the case was made over to the Munisff's Court, Neyyattinkara and the case was posted for evidence on 20-10-2005. On 20-10-2005 the appellant was absent and an application for excusing his absence was filed through his counsel. However, the court below acquitted the 1st respondent under section 256 Cr.P.C. stating that the application filed by the appellant do not reveal the illness of the appellant.

2. This Court heard learned counsel for the appellant, learned counsel for the 1st respondent and learned Public Prosecutor.

3. The learned counsel for the appellant submits that the appellant was effectively prosecuting the complaint for the past three years, but the court below dismissed the complaint for the reason that he was absent on 20-10-2005. The learned counsel also submits that the appellant was absent because of his illness and an application was filed to that effect. The learned counsel relies on two decisions of this Court reported in Don Bosco V. Partech Computers Ltd. (2005(2) KLT 1003) and G.F.S.Chits & Loans (P) Ltd. V. Rajesh (2006(3) KLT 825) to support his case.

4. Considering the contentions on either side and the principles laid down by this Court in the above two decisions, this Court is of the view that the order under challenge is liable to be set aside. Hence, the impugned order is set aside and the matter is remanded to the court below for fresh consideration. The court below is directed to re-consider the matter and dispose of the same as per law.

The parties may appear before the court below on 27-1-2007.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A.2201 /2005

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Judgment

20-12-2006